

Application No. 10/758,325
Amendment dated January 17, 2008
Reply to Office Action of October 18, 2007

- R E M A R K S / A R G U M E N T S -

Claims 1 to 26, 29, 30, and 32 to 39 remain in the application.

The claims have not been amended.

Claims 1 to 26, 29, 30, and 32 to 39 stand rejected on the grounds of non-statutory obviousness-type double patenting as being unpatentable over claims 2 to 24 of U.S. Patent Application No. 09/913,088 (now U.S. Patent No. 7,316,805).

According to the Examiner, it would have been obvious to one of ordinary skill in the art to use seals as claimed because '088 claims a plurality of caps, a threading member, and covering and sealing.

Reconsideration is expected on the following grounds.

The device and method recited in claims 2 to 24 of '088 do not permit pre-filling of a microplate with a precipitating solution, as claimed in the present application. Claims 2 to 24 of '088 call for a microplate or tray having a plurality of wells that can be individually closed and sealed by a plurality of individual caps provided with integral locking members for interlocking engagement with corresponding interlocking members associated with the wells. The seal recited in the claims of '088 corresponds to an O-ring-like structure to prevent the liquid or air from seeping between the cap and the mouth of the wells. No structure is interposed between the interior of the wells and the caps to prevent the precipitating solution from contacting the undersurface of the caps. The undersurface of each cap faces the interior of the corresponding well and provides a transparent crystallization support for suspending a droplet of solution over the precipitating solution in the well. No structure or seal is disclosed to prevent the precipitating solution from contacting the undersurface of the caps during shipping or handling. Therefore, according to the claims of '088, the precipitating solution cannot possibly be pre-filled in the wells. The precipitating solution would otherwise contaminate the undersurface of the caps. The caps need to be removed from the wells in order that a droplet of solution to be crystallized be poured onto the undersurface of the cap.

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During this operation the precipitating solution in the well is unsealed. Claims 2 to 24 do not provide any sealing structure to separately seal the precipitating solution.

The invention claimed in '088 does not provide any hint or suggestion as to how the wells could be pre-filled with a precipitating solution. The claims of '088 only call for one level of seal at the upper end of the wells. There is clearly no second level of seal recessed in the wells or any teaching of encapsulating the precipitating solution in the wells. The claims of '088 also fail to teach any piercable or breakable temporary shipping seals. The invention recited in the claims of the present application goes a step further than the invention claimed in '088 by providing a combination of structural features enabling pre-filling of a microplate. This constitutes a significant improvement over the device claimed in '088.

In view of the foregoing, withdrawal of the double-patenting rejection is respectfully requested.

The application is believed to be in condition for allowance, and an early action to this effect would be much appreciated.

Respectfully submitted,

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By:

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Date

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